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75-108

IN THE SUPREME COURT OF
THE UNITED STATES

October Term 1974

TROY'S WELDING INC., ET AL.,
Petitioner

V.

UNITED STATES AND DENNIS CAREY, SPECIAL AGENT OF THE INTERNAL REVENUE SERVICE,
Respondents

PETITION FOR A WRIT OF CERTIORARI OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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CITATIONS

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TROY H. ELLIOTT, Counsel Pro-Se, Petitioner, prays that a WRIT OF CERTIORARI issue to review the judgments of the United States Court of Appeals for the Tenth Circuit entered in the above case March 19, 1975.

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OPINIONS BELOW

Opinion of the District Court for the District of New Mexico, R 23 (1) a
Appendix Page 17 - (1)(9)

Opinion of the Court of Appeals for the Tenth Circuit, R 23 (1) a
Appendix Page 17 - (9)

JURISDICTION

The judgments of the Court of Appeals for the Tenth District were made and entered March 19, 1975 (R 23 (1) B, and copies thereof are appended to this petition in the Appendix Page 17 - 1-7

Motion for time extension to file petition for Writ of Certiorari, April 29, 1975 Appendix Page 17 - (9)

Order extending time to file petition for Writ of Certiorari to July 17, 1975 inclusive received May 15, 1975
Appendix Page 17-(9)

Jurisdiction of this Court invoked under 28 USC 1254 (1)

QUESTIONS PRESENTED

1. How can all of 26 USC be compatible with the U.S. Constitution when many

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sections are in direct conflict with the Constitution?

2. Why was trial by jury omitted? Amendment VII, Appendix Page 18 -(14)

3. Does IRS have legal Gestapo rights to by-pass any Constitutional due process of law?

4. Does the 16th Amendment nullify any rights guaranteed by the 1st, 4th, 5th, 6th, 9th, 13th, and 14th Amendments to the Constitution?

Appendix Pages 17 (10 THRU 16)

5. Should middle-class taxpayers and small business taxpayers be compelled to obey unconstitutional statutes, rules and administrative procedures when 162,870 (approx.) tax exempt organizations are not required to obey them? Nor are they forced to! They are not required to keep records or file returns or pay taxes.

Of the above number, petitioner TROY H. ELLIOTT, finds 21 of the above organizations are now or have been listed as far left or subversive organizations.

Appendix Page 19 -(17)

6. Can or will justice be served with only 33 minutes allowed in this case's entire procedure for petitioner to confront his adversary in person?

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7. Is it unreasonable for petitioner, TROY H. ELLIOTT, to expect the same guaranteed justice, rights, judicial equality and respect as Defendant in Stanford vs. Texas?
Appendix Page 20 - (18)

8. Is the U.S. Constitution the supreme law of the land?

9. Is not it true that members of the judiciary take an oath to uphold the Constitution Article VI Sec 3?
Appendix Page 21 - (19)

10. Would Counsel Pro-Se be permitted to dispense information contained in the Bill of Rights to a jury?

11. Does the Supreme Court consider case precedence rather than the Constitution the supreme law of the land?

12. 26 USC Section 6331 (B) (C) infers to the petitioner, TROY H. ELLIOTT, that the statement, "seizure by any means," implies that IRS can use armed force, deceit, trickery, destruction and trespassing to achieve their means to an end. Appendix Page 21 - (20)

13. Does the Supreme Court declare 26 USC Sections 6331, 7342, 7321, 7325 and 7605 takes precedence over the U.S. Constitution? Appendix Page 22 - (21)

14. "Tyrannical" administrative powers is exercised by IRS; is there no Constitutional relief for the U.S. taxpayer from this type activity?

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15. The Mirinda decision is a landmark decision beneficial to all. Why was it not issued in petitioner's behalf? Appendix Page 23 - (22)

16. Gold and silver is constitutional legal tender for the United States and to be used for payment of debts, both private and public, then how can citizens be compelled to use fiat Federal Reserve Notes as anything of monetary value? Article I Section 8, 10, Treasury Letter of Sept. 21, 1971.
Appendix Page 23 - (23)

17. IRS agent claim sovereign immunity in cases of liable suits, with P.L. 93-253. How is this possible?
Appendix Page 24 - (25)

18. 26 USC Section 7214 is seldom enforced against unscrupulous IRS agents? Why?
Appendix Page 24 - (26)

19. 26 USC Sections 892 and 893(A) grant special privileges to foreign governments, internationsl organizations and employees and are subject to no tax scrutiny is applied to them as is to U.S. taxpayer, "Societya Generale Immobiliare" files no tax report and pays no tax.
Appendix Page 26 - (27)

20. Why no tax or tax audit for church competitive business with profitable income? 26 USC 7605(C) 1976.

[redacted]

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21. To permanently determine an issue, does not a citizen have the legal right to judgment of his peers?

22. Is it not true that fines and penalties as set forth in 26 USC fining taxpayers is cruel and excessive? Amendment VIII, U.S. Constitution.
Appendix Page 27-(28)

23. 26 USC Section 7206(1) declaration under penalties of perjury as understood by petitioner means to lie about facts on 1040 Form. It asks about dollars earned and subject to tax. When petitioner has no legal constitution dollars, "375.64 grams of pure silver or United States Notes redeemable in gold or silver," I will not purger myself by saying such has been earned or received; therefore I, TROY H. ELLIOTT, ask why be made to commit perjury? Articles of Confederation 1785.
Appendix Page 28-(29)

24. Why are some tax debts charged off as uncollectable and others collected forceably through jeopardy assessments, Wall St. Stockbroker, Internal Revenue Service Taxpayers Assistance and Compliance Programs, Fiscal year 1975, page 730?
Appendix Page 28-(30)

25. It is apparent that IRS agents will stoop to any means to harass small taxpayers in order to comply with demands of their superior if they have the desire to advance within

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the agency. How can such method as demonstrated in IRS letter dated May 2, 1975 be permitted?

STATEMENT

This case arises through discovery and knowledge of gross tax inequities existing in this nation's tax structure, through the passage of Amendment XVI and its becoming part of the U.S. Constitution. This causing the petitioner, TROY H. ELLIOTT, to question the constitutionality of the application of the 26 USC under which the tax laws of this nation are enforced.

The realization of the monstrous and unjust application of the income tax burden on the middle class and small business taxpayer, highlighting the fact that the rich and tax exempt segment of our society have pawned off onto the middle class taxpayer the major responsibility of supporting the major part of the cost of our Federal Government.

I, TROY H. ELLIOTT, have no objection to paying my equal share of the cost of limited government, but strongly object to the unfair, unethical, unconstitutional and tyrannical ways by which they are applied and collected. Tax inequities and injustice are cause for the origin of Civil Action No. 74-402 filed August 19, 1974 in the DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO. It was filed in opposition to the issuance of IRS Summons 2039-A issued June 5, 1974. (R 4(a) F.R.C.P.)

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On August 23, 1974, petitioner filed Motion for Time Extension to answer SHOW CAUSE ORDER; also filed was Memorandum Opposing Show Cause, asking dismissal of Show Cause Order and enforcement of IRS Summons 2039-A simply because petitioner, TROY H. ELLIOTT, received no hearing, judicial determination or court order with which to comply.

Basic facts of case are set forth in the opening paragraphs of this statement and are reinforced by the belief that there is a more just, fair, equitable and financially equal way of administering the tax laws of this nation.

The methods of enforcing present tax laws are in direct conflict with the U.S. Constitution and Amendments I, IV, V, VI, VII, IX, XIII and XIV thereof.

Hearing was held September 9, 1974 in UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO and Troy H. Elliott and IRS granted ten days for the presentation of more facts.

Motion to Enjoin Troy's Welding Inc. from releasing any records demanded on IRS Summons 2039-A dated June 5, 1974, was filed in UNITED STATES DISTRICT COURT FOR DISTRICT OF NEW MEXICO on Sept. 19, 1974 and Motion was ignored and never answered, and petitioner TROY H. ELLIOTT has received nothing in writing concerning disposition of this Motion nor has any mention ever been made concerning it in any verbal contact with the court.

TROY H. ELLIOTT has never been granted only 33 minutes oral argument concerning matter of this case of which at

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least ½ of the above time was consumed by the opposition. The entire time span of the case covered the period of time from 10:01 a.m. to 10:34 a.m., September 19, 1974.

The U.S. DISTRICT COURT OF THE DISTRICT OF NEW MEXICO issued an order for TROY H. ELLIOTT to appear, with records requested, before Special Agent Dennis Carey on September 20, 1974 at 10:00 a.m. At the office of Troy's Welding Inc., order was issued three days after appearance date specified. Court corrected error with order of September 25, 1974 with new appearance date of October 4, 1974.

Notice of Appeal filed with U.S. DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO, October 1, 1974 and Motion for Stay pending appeal filed with U.S. COURT OF APPEALS TENTH CIRCUIT, October 2, 1974.

IRS Petition to Enforce Summons filed August 19, 1974. It is stated that TROY H. ELLIOTT resides at 6203 2nd St. N.W., Albuquerque, New Mexico. This is in error. The proper address of residence is 6201-2nd St. N.W., Albuquerque, New Mexico. It is also stated in the aforementioned Petition that TROY H. ELLIOTT has no cause for refusing to comply with IRS Summons issued June 5, 1974. This is not so. Petitioner believes he is an American of average intelligence and can read the simple terms expressed in the 1st, 4th, 5th, 6th, 7th, 9th, 13th and 14th Amendments to the U.S. Constitution and understand their meaning and application to each of his rights and privileges set forth in each of them.

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"It is conceded under 26 USC Sec. 7602, the witness or any party in interest may attack Summons before the hearing officer." (Fitzmartin vs. Bingler 244 F. Supp. 541, 1965)

It is also apparent that TROY H. ELLIOTT does not have equivalent protection awarded defendant in Stanford vs. Texas 379, US476, 85 Sct 506, 13 L. Ed. 2D, 813 1965. Appendix Page 20-(18)

Motion for Stay Pending Appeal filed October 2, 1974 in U.S. COURT OF APPEALS FOR TENTH CIRCUIT by TROY H. ELLIOTT and Sustaining Order issued October 3, 1974.

Petitioner filed Brief asking conformation of validity of IRS Summons versus the "U.S. Constitution" and "Due Process of Law."

Letter asking Oral Argument Time Extension filed with TENTH CIRCUIT COURT OF APPEALS and held in abeyance by three-judge panel until case was calendared for Oral Argument Extension.

Letter of Decision Requested January 10, 1975 and Oral Argument denied February 12, 1975.

Again TROY H. ELLIOTT raises the question, is 33 minutes ample time to satisfactorily discharge as important a matter as is in question between him and his adversary and secure for the petitioner "Due Process of Law."

Lack of Due Process is further magnified by the fact that IRS used threat of penalty and fine if petitioner's accountant and bank did not conform to request of IRS Summons 2039-A, 26 USC Sec 7601-7605-7610 (7610 which is not to be

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found in 1971 Printing of USC 1970 Edition purchased from U.S. Printing Office). This is pure blackmail, in the first degree.

TROY H. ELLIOTT filed Application for Temporary Restraining Order, February 14, 1975 against the First National Bank in Albuquerque requesting the bank be restrained from conforming to IRS Summons issued to them. Application dismissed May 8, 1975. (75-093 U.S.D.C.N.M.)

On May 12, 1975 TROY H. ELLIOTT filed Complaint 75-254 asking money damages for deprivation of Constitutional Rights, for conspiracy to deprive Constitutional Rights and for failure to protect Constitutional Rights. Complaint dismissed June 26, 1975, signed by Judge Edwin L. Mechem, stating that immunity is built in absolute under Rule 12(b)6. This cannot be possible because all are subject to the law and none are above the law. Article VI Sec 3 of the U.S. Constitution clearly states, "The Senator and Representatives before mentioned and the members of the several state legislatures and all executive and judicial officers, both of the United States and of the several states shall be bound oath or affirmation, to support this Constitution, but no religious test shall ever be required as a qualification to any office or public trust under the United States."

TROY H. ELLIOTT declares his Civil Rights were violated when Judge Howard Bratton dismissed Motion for Restraining Order against the First National Bank to restrain them from supplying records to IRS.

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Petitioner requested Time Extension to file Application for Writ Certiorari and approval was received May 9, 1975.

In checking activities in this case it is found that Dennis Carey issued IRS 2039-A Summons on A.W. LaPine, petitioner's accountant, and records were obtained illegally because Summons was issued February 28, 1975 requesting compliance of February 11, 1975 and records were taken from the office of A.W. LaPine on February 6, 1975. This indicates Special Agent Carey is not capable of efficiently executing his assignments and has and will resort to any means to reach an end. A copy of Summons is included.

Appendix Page 30

This action is confirmed by IRS letter dated May 2, 1975 showing police state tactics used by IRS agents.

Appendix Page (29

REASON FOR GRANTING THE WRIT

The decisions below should be reviewed because it is factually clear that plans to follow "Due Process of Law" have been perverted in several actions in this case. Oral debate and argument have been grossly limited, jury trial suppressed and IRS has violated petitioner's civil and constitutional rights and has operated beyond its constitutional authority.

Appendix Page 18 - (14)

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this PETITION FOR A WRIT OF CERTIORARI should be granted.

Troy H. Elliott, Pro-Se
Counsel for Petitioner

APPENDIX

1-8. Opinion of the UNITED STATES COURT OF APPEALS TENTH CIRCUIT

9. ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

10. AMENDMENT I, U.S. CONSTITUTION: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

11. AMENDMENT IV, U.S. CONSTITUTION: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

12. AMENDMENT V, U.S. CONSTITUTION: No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia,

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NOT FOR ROUTINE PUBLICATION

MAR 19 1975

HOWARD K. PHILLIPS
CLERK, UNITED STATES
COURT OF APPEALS
TENTH CIRCUIT

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

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No. 74-1600

UNITED STATES OF AMERICA and DENNIS CAREY, Special Agent of the Internal Revenue Service, Petitioners-Appellees, vs. TROY'S WELDING SHOP, INC. and TROY H. ELLIOTT as President of Troy's Welding Shop, Inc., Respondents-Appellants.	Appeal from the United States District Court for the District of New Mexico (D.C. No. 74-402)

Heard on the Briefs only.

Scott P. Crampton, Assistant Attorney General, Washington, D.C. (Gilbert E. Andrews, Crombie J. D. Garrett, and Robert E. Lindsay, Tax Division, Department of Justice, Washington, D.C. on the briefs; Of Counsel: Victor R. Ortega, United States Attorney and Ruth Streeter, Assistant United States Attorney, Albuquerque, New Mexico).

Troy H. Elliott, Pro Se, Albuquerque, New Mexico.

Before SETH, McWILLIAMS and BARRETT, Circuit Judges.

PER CURIAM.

Troy H. Elliott (Elliott), taxpayer, and President of Troy's Welding Shop, Inc., appeals from a lower court order directing the enforcement of an Internal Revenue Service (IRS) summons issued pursuant to Sections 7402(b) and 7604(a) of the Internal Revenue Code of 1954.

A summary of the facts will facilitate our review. During June of 1974, Special Agent Dennis Carey (Carey) of the IRS was investigating Elliott in an effort to ascertain his income tax liability for the years 1971, 1972, and 1973. During his investigation it became apparent that certain documents and information relative to Elliott's income for the years in question were in the possession and control of Troy's Welding Shop, Inc. Therefore, on June 5, 1974, Carey issued an IRS summons to Troy's Welding Shop, Inc., "requesting its appearance before Carey at its place of business" on June 19, 1974, to give testimony relative to:

1. Payroll records of the corporation for the years 1971, 1972, and 1973.

2. Checks issued to TROY H. or BESSIE I. ELLIOTT, for the years 1971, 1972, and 1973.

3. Any Forms W-4 or W-4E issued or submitted to the corporation in names of TROY H. or BESSIE I. ELLIOTT for the years 1971, 1972 and 1973.

On June 19, 1974, Elliott appeared on behalf of his corporation but refused to testify or produce any of the information requested in the IRS summons. Thereafter, on August 19, 1974, a petition was filed in the district court to enforce the IRS summons. An "Order to Show Cause" was issued by the Court on the same day directing Troy's Welding Shop, Inc. and Elliott to appear on August 30, 1974, to show cause why the summons should not be enforced.

Following Elliott's request for an extension of time, a hearing was held on September 9, 1974, at which time he appeared pro se. During the hearing Carey testified that he served the summons upon Elliott's corporation after Elliott refused to discuss his tax matters. Elliott did not cross-examine Carey nor did he present any evidence to contravene Carey's testimony. Elliott did testify, however, that the summons was invalid because it was not issued by a court and not preceded by a hearing; that he was not obligated to produce any records because the summons did not specify in detail the records desired; that he was not willing to testify against himself, nor was he willing to have his property seized without due process of law; and that he was not willing to pay more taxes than were due when he had not earned any "legal money" and where "special-privileged persons pay little or no taxes."

At the termination of the hearing the Court granted the parties an additional ten days to submit additional material, after which it entered an order directing Troy's Welding Shop, Inc., through its president, Elliott, to produce for examination the materials requested in the summons.

On appeal Elliott contends that he has been denied equal protection of the law; that he is "the victim of invidious discrimination"; and that appellees should be permanently enjoined from investigating or acquiring the materials requested in the summons. Elliott contends specifically that: (1) the Fourth and Fifth Amendments protect him against warrantless searches; (2) he has the right to be secure in his home against unreasonable searches and seizures; (3) the summons does not afford due process of law; (4) the information requested is private financial property, the production of which cannot be compelled; (5) "26 U.S.C. 7602 versus Amendments Four and Five,

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U. S. Constitution are conflict for politics"; and (6) "concomitant issues involved in issues above."

Elliott's basic contention is that the IRS summons issued by Carey in accordance with his investigation, is violative of the United States Constitution and amendments thereto. We hold that the summons, as issued, was proper and not violative of Elliott's rights.

The propriety and legality of the issuance of a summons pursuant to Sections 7402(b) and 7604(a) was initially discussed in detail in United States v. Powell, 379 U.S. 48 (1964), wherein the Court noted:

> Reading the statutes as we do, the Commissioner need not meet any standard of probable cause to obtain enforcement of his summons, either before or after the three-year statute of limitations on ordinary tax liabilities has expired. He must show that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the Commissioner's possession, and that the administrative steps required by the Code have been followed - - - .
>
> 379 U.S. at 57-58.

Procedural Due Process

Powell did not, however, afford the IRS carte blanche usage of the summons power:

> Such an abuse would take place if the summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation.
>
> 379 U.S. at 58.

Supreme Court Review

The right of the IRS to utilize its summons power under § 7602 was further defined in Donaldson v. United States, 400 U.S. 517 (1971):

> We hold that under § 7602 an internal revenue summons may be issued in aid of an investigation if it is issued in good faith and prior to a recommendation for criminal prosecution.
>
> 400 U.S. at 536.

The investigative powers afforded the IRS via a summons was recently reaffirmed in United States v. Bisceglia, U.S. (43 L.W. 4242, February 19, 1975). There, the Court, in upholding the right of the IRS to issue "John Doe" summons to a bank in an effort to discover the identity of a person whose bank transactions suggested possible tax liability, noted:

> . . . The purpose of the statutes is not to accuse, but to inquire. Although such investigations unquestionably involve some invasion of privacy, they are essential to our self-reporting system, and the alternatives could well involve far less agreeable invasions of house, business, and records.
>
> We recognize that the authority vested in tax collectors may be abused, as all power is subject to abuse. However, the solution is not to restrict that authority so as to undermine the efficacy of the federal tax system, which seeks to assure that taxpayers pay what Congress has mandated and prevents dishonest persons from escaping taxation and thus shifting heavier burdens to honest taxpayers. Substantial protection is afforded by the provision that an Internal Revenue Service summons can be enforced only by the courts. 26 U.S.C. § 7604(b); Reisman v. Caplin, 375 U.S. 440 (1964).

* * *

Rule 41 (A & B)

> . . . . Section 7601 permits the Internal Revenue Service to investigate and inquire after "all persons . . . who may be liable to pay any internal revenue tax . . . ." To aid in this investigatory function, § 7602 authorizes the summoning of "any . . . person" for the taking of testimony and examination of books which may be relevant for "ascertaining the correctness of any return, . . . determining the liability of any person . . . or collecting any such liability . . . ." Plainly, this language is inconsistent with an interpretation that would limit the issuance of summonses to investigations which have already focused upon a particular return, a particular named person, or a particular potential tax liability.

Elliott has not shown: (1) that the investigation surrounding the summons in question was not in good faith; (2) that it was for information already available to the IRS; or (3) that it was sought after a recommendation for criminal prosecution was made.

The burden of establishing the improper usage of a summons is upon the taxpayer. United States v. Powell, supra. The validity of a summons is to be tested as of the date of its issuance. United States v. Hodgson, 492 F.2d 1175 (10th Cir. 1974), United States v. Billingsley, 469 F.2d 1208 (10th Cir. 1972). Elliott has not shown or even alleged that the summons was improperly used. Our review of the record has not revealed any showing of impropriety or bad faith on the part of IRS against Carey.

Since we have previously held that a taxpayer has no right to notice that a summons is being used, Scarafiotti v. Shea, 456 F.2d 1052 (10th Cir. 1972), and in view of the liberal construction to be afforded Section 7602 in meeting the vital public purposes which it serves, United States v. Continental

Bank & Trust Company, 503 F.2d 45 (10th Cir. 1974), we hold that the summons was issued in good faith for proper and necessary information. It must be enforced.

Our holding here is consistent with our rule that natural persons may be compelled to furnish corporate records irrespective of the fact that such records may tend to incriminate them. Hensley v. United States, 406 F.2d 481 (10th Cir. 1968). See also Couch v. United States, 409 U.S. 322 (1973), holding that a petitioner could not prevent his accountant from turning over corporate records pursuant to an IRS summons, and United States v. Hodgson, supra, wherein we held that an attorney could not refuse to comply with an IRS summons requiring that he deliver over documents of a client.

AFFIRMED.

Supreme Court of the United States

No. A-934

TROY'S WELDING SERVICE, INC., ET AL.,

Petitioners

v.

UNITED STATES and DENNIS CAREY, SPECIAL AGENT OF THE INTERNAL REVENUE SERVICE

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 17, 1975.

/S/ Byron R. White

Associate Justice of the Supreme Court of the United States

Dated this 9th day of May, 1975.

when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

13. AMENDMENT VI, U.S. CONSTITUTION: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

14. AMENDMENT VII, U.S. CONSTITUTION: In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

15. AMENDMENT IX, U.S. CONSTITUTION: The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

16. AMENDMENT XIV, U.S. CONSTITUTION: Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

17. TAX EXEMPT FAR LEFT OR SUBVERSIVE ORGANIZATIONS, 26 USC Section 170 (C), 78(1-75):

American Civil Liberties Union p. 22
Council of Foreign Relations p. 194
NAACP Legal Defense and Educational Fund Inc., NY, NY, p. 545
Federal Union p. 263
Union for Democratic Action p. 796
Carnegie Endowment for International Peace p. 121
Carnegie Foundation for the Advancement of Teaching, NY p. 121

American Association for the United Nations p. 71
Atlantic Council of the United States p. 52
Carnege Corporation p. 126
Ford Foundation p. 279
Foreign Policy Association p.279
Freedom House p. 291
Fund for the Republic Inc. p.301
Fellowship of Reconciliation p. 265
Public Affairs Institute p. 644
Anti-Defamation League of B'nai Brith, NY p. 36
League of Industrial Democracy Inc., NY p. 455
Turn Toward Peace p. 265
United Nations Association of the United States p. 805 Washington

18. STANFORD v. TEXAS:
The indiscriminate sweep of that language is constitutionally intolerable. To hold otherwise would be false to the terms of the Fourth Amendment, false to its meaning, and false to its history....But the Fourth and Fourteenth Amendments guarantee to John Stanford that no official of the State shall ransack his home and seize his books and papers under the unbridled authority of a general warrant--no less than the law 200 years ago shielded John Entick from the messengers of the King.

19. ARTICLE VI, Sec. 3, U.S. CONSTITUTION: The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

20. 26 USC Sec 6331 (B) & (C):
(B) Seizure and sale of property. The term "levy" as used in this title includes the power of distraint and seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(C) Successive seizures. Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary or his delegate may, thereafter,

and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

21. 26 USC Sec 6333, 7321, 7605 B:

6333 Production of books.
If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of any books or records, containing evidence or statements relating to the property or right to property subject to levy, shall, upon demand of the Secretary or his delegate, exhibit such books or records to the Secretary or his delegate.

7321 Authority to seize property subject to forfeiture.
Any property subject to forfeiture to the United States under any provision of this title may be seized by the Secretary or his delegate. (Aug. 16, 1954, ch. 736, 68A Stat. 869.)

7605 B Restrictions on examination of taxpayer.
No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer

requests otherwise or unless the Secretary or his delegate, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

22. MIRANDA v. STATE OF ARIZONA 86 ct 1602, 384, US 436. 16 L. ED. 20, 694 (1966):
Without regard to taxpayer's subjective state of mind, Miranda warnings must be given to taxpayer under criminal investigation by either the revenue agent or the special agent at the inception of the first contact with taxpayer after case has been transferred to the Intelligence Division of Internal Revenue Service.

23. ARTICLE I, Sec. 8 & 10, U.S. CONSTITUTION:
8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obliga-

tion of contracts, or grant any title of nobility.

24. LETTER, U.S. TREASURY Exhibit "A" attached

25. PUBLIC LAW 93-253:
"That, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising, on or after the date of the enactment of this proviso, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, 'investigative or law enforcement officer' means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law."

26. 26 USC Sec 7214 (A)
Unlawful acts of revenue officers or agents.
Any officer or employee of the United States acting in connection with any revenue law of the United States--
(1) who is guilty of any extortion or willful oppression under color of law; or
(2) who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation,

or reward, except as by law prescribed, for the performance of any duty; or

(3) who with intent to defeat the application of any provision of this title fails to perform any of the duties of his office or employment; or

(4) who conspires or colludes with any other person to defraud the United States; or

(5) who knowingly makes opportunity for any person to defraud the United States; or

(6) who does or omits to do any act with intent to enable any other person to defraud the United States; or

(7) who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate, return, or statement; or

(8) who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to the Secretary or his delegate; or

(9) who demands, or accepts, or attempts to collect, directly or indirectly as payment or gift or otherwise, any sum of money or other thing of value for the compromise, ad-

justment or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do;
shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

27. 26 USC Sec 892 & 893 (A) & A 1

892 Income of foreign governments and of international organizations.

The income of foreign governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments or by international organizations, or from interest on

deposits in banks in the United States of moneys belonging to such foreign governments or international organizations, or from any other source within the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle. (Aug. 16, 1954, ch 736, 68A Stat. 284.)

893 Compensation of employees of foreign governments or international organizations.
(a) Rule for exclusion.
Wages, fees, or salary of any employee of a foreign government or of an international organization (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government or international organization shall not be included in gross income and shall be exempt from taxation under this subtitle if--

(1) such employee is not a citizen of the United States, or is a citizen of the Republic of the Phillippines (whether or not a citizen of the United States).

28. AMENDMENT VIII, U.S. CONSTITUTION: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

29. ARTICLE OF CONFEDERATION 1785:
Under the Articles of Confederation, the Congress in 1785 adopted the dollar as the monetary unit of the United States, and in 1786 fixed its value at 375.64 grains of pure silver. This unit was derived from the Spanish piaster, or milled dollar, which had constituted a large part of the metallic circulation of the English colonies in America.

30. INTERNAL REVENUE SERVICE TAXPAYER ASSISTANCE AND COMPLIANCE PROGRAMS, 1975:
p. 730 EXAMPLE. In Reno, Nev., the IRS attached the bank account of an ailing real estate saleswoman, who was recovering from a heart attack, taking the proceeds of her disability checks. The agency said she owed $3,200.04 for the years 1968-1970. Less than five months after filing a lien, IRS collected its money.
In New York City, the IRS wrote off as uncollectible the $375,129.12 owed by the company of a Wall Street stockbroker who managed to maintain homes in Manhattan and Florida. A personal lien against the stockbroker for $112,382.73, filed Nov. 5, 1970, remains outstanding.

Address any reply to: P.O. Box 534, Pittsburgh, Pa. 15230

Department of the Treasury

District Director

Internal Revenue Service

Date: MAY 2 1975 | In reply refer to: I:4:JHL

We blocked out the patients name here. xxxxx xxxxxx

In re: Dr. Robert P. Bengel
412 Wedgewood Drive
Lower Burrell, Pennsylvania

This office is conducting an investigation of the income tax liability of Dr. Robert P. Bengel for the years 1971 through 1973. The investigation has indicated that you made payments to Dr. Bengel for services during these years.

It is requested that you forward the following original documents related to all payments to Dr. Bengel during the years 1971 through 1973:

1. Canceled checks issued to Dr. Bengel
2. Receipts from Dr. Bengel
3. Statements or invoices from Dr. Bengel

Please list the payments on the reverse side of this letter with a brief statement of the purpose of each payment. It would also be helpful if you would mention the names of anyone else you know may have made payments to Dr. Bengel. Enclosed you will find a return envelope for your convenience.

The original documents will be returned to you promptly. In the event you prefer to submit photocopies of the documents (both sides of the canceled checks) rather than the originals, they will be acceptable.

Should you prefer to have an agent call upon you for the purpose of securing the requested information, please advise this office as soon as possible.

It is important that your reply be addressed to Special Agent James H. Linn, Intelligence Division, Post Office Box 534, Pittsburgh, Pennsylvania, 15230. Special Agent Linn can be contacted at telephone number 412-644-5663 if necessary.

This information is requested in accordance with provisions of Section 7602, Internal Revenue Code of 1954.

Your cooperation in this matter will be greatly appreciated.

Very truly yours,

James H. Linn

James H. Linn,
Special Agent

Enclosure

(29)

POOR COPY

Form 2039-A
(Rev. 3-74)

Summons

Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of

Troy H. Elliott

Internal Revenue District of Albuquerque

Period(s) 1971, 1972, 1973

The Commissioner of Internal Revenue

To A-W. LaPine

At 3115 Silver St SE.

Greetings: You are hereby summoned and required to appear before

Dennis Carey

an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the place and time hereinafter set forth:

① Retained workpapers and file resulting from the preparation of tax returns for Troy Welding Inc for the years listed above.

② Retained workpapers and file resulting from the preparation of tax returns for Beaine F. Elliott for the years listed above

Place and time for appearance:

at 517 Gold Ct. SW. Albq. NM.

on the 11th day of Feb, 19 75 at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States commissioner or magistrate to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of the Internal Revenue Code

this 28th day of February, 19 75

Attested Copy 766-31-8 Dennis Carey Signature — Special Agent Title

(30)

POOR COPY

OFFICE OF
TREASURER OF THE UNITED STATES

TREASURY DEPARTMENT
FISCAL SERVICE
WASHINGTON, D.C. 20220

September 27, 1971

Dr. Robert P. Bengel
Bengel Chiropractic Clinic
825 Freeport Road
Breckenridge, Pennsylvania 16014

Dear Dr. Bengel:

On behalf of the Secretary, I am responding to your letter dated September 20, 1971, concerning the constitutional definition of a dollar.

Under the Articles of Confederation, the Congress in 1785 adopted the dollar as the monetary unit of the United States, and in 1786 fixed its value at 375.64 grains of pure silver. This unit was derived from the Spanish piaster, or milled dollar, which had constituted a large part of the metallic circulation of the English colonies in America.

The Constitution does not contain a definition of a dollar. It merely gives to the Congress the power to coin and regulate the value of money.

Sincerely,

W. T. Howell
Deputy Treasurer

Exhibit "A"

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-108

TROY'S WELDING, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Following a hearing, the United States District Court for the District of New Mexico ordered petitioner Troy H. Elliott to comply with an Internal Revenue Service summons (R. 20-22).[1] The court of appeals affirmed (Pet. App. 1-7).

The summons (R. 11-12) required Troy H. Elliott, as president of Troy's Welding Shop, Inc., to produce specified corporate records for the years 1971 through 1973, as part of an investigation of the tax liability of Elliott for those years. Although Elliott appeared in response to the summons, he refused to produce the summoned records (R. 7, 10; Supp. R. 8).

[1] "R." and "Supp. R." refer respectively to the appendix and supplemental appendix in the court of appeals.

At the ensuing hearing in the district court, the Internal Revenue Service agent who issued the summons testified concerning its issuance and Elliott's refusal to comply (Supp. R. 3-8). Elliott, who appeared *pro se*, did not cross-examine the witness, stating that he had no questions (Supp. R. 9). He put on no evidence (Supp. R. 12) but did state that: (1) there had been no order with which the corporation could comply and they had never had a hearing (Supp. R. 11); (2) only the rare taxpayer would be likely to know that he could refuse to produce records, nor would he be likely to make any distinction between a revenue agent and a special agent (Supp. R. 11-12); (3) he was not required to produce the records unless they were specified in detail (Supp. R. 12); (4) he had not earned any "legal money" (Supp. R. 18); (5) he was not willing to testify against himself (Supp. R. 18-19); (6) he was not willing to have his property seized without due process of law (Supp. R. 19); (7) he was not willing to pay more taxes than were due and "see special-privileged persons or groups pay little or no taxes" (*ibid.*); and (8) he had not been given the warnings required by *Miranda* v. *Arizona*, 384 U.S. 436 (Supp. R. 21).

Thereafter, petitioners Elliott and his corporation filed a motion (R. 18-19) seeking an injunction "for protection of Constitutional and Civil Rights." The motion asserted that the summons was issued without a court order; that the Internal Revenue Service was on a "fishing expedition"; that "the witness or any party in interest may attack Summons before the hearing officer"; and that "either the taxpayer or any affected party might restrain compliance * * * until compliance is ordered by a Court of competent jurisdiction." The district court thereupon ordered the summons enforced.

Petitioners present twenty-five questions for this Court's consideration (Pet. 5-10). The primary reason they advance for Elliott's refusal to comply with the summons appears to be their general dissatisfaction with the tax structure and the methods for assessing and collecting taxes (see Pet. 5-9 (Questions 1, 3, 4, 5, 12, 13, 14, 19, 20, 24), 10-11). But these questions are not germane to the question whether the Internal Revenue Service could use its summons power to examine corporate records in order to determine petitioner Elliott's correct tax liability.

Petitioners also appear to assert (Pet. 6-7, 9-10 (Questions 3, 7, 25), 13-15) that the summons was not being used for a proper purpose. However, they bear the burden of showing an abuse of process, *United States* v. *Powell*, 379 U.S. 48, 58, and despite the opportunity to do so,[2] petitioners presented no evidence. At all events, the evidence established that the agent was engaged in an investigation directed toward establishing the correct income tax liability of Elliott for the years 1971 through 1973 (R. 9; Supp. R. 5) and that the summoned records were necessary for such a determination (R. 10; Supp. R. 6-7). Petitioners do not allege that the corporate records sought (see R. 11)—relating as they do to financial dealings between the corporation and the taxpayer—were not relevant to the investigation. There was accordingly ample support for the conclusion of the court of appeals that "the record has not revealed any showing of impropriety or bad faith on the part of IRS" (Pet. App. 6).

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[2]Petitioner was given an opportunity to cross-examine the issuing agent and to present his own evidence. He was thus afforded an adversary hearing and cannot now complain that the enforcement hearing lasted only 33 minutes (see Pet. 6 (Question 6), 11-13, 15) in light of his failure to avail himself of the opportunity to cross-examine the agent or to present his own evidence. Similarly, his questions relating to the lack of a jury trial (see Pet. 6-7, 9 (Questions 2, 10, 21)) are without merit. There is no right to a jury trial in a summons enforcement proceeding. *Kennedy* v. *Rubin*, 254 F. Supp. 190, 194-195 (N.D. Ill.). See also *United States* v. *Louisiana*, 339 U.S. 699, 706. In any event, petitioner made no demand for trial by jury. See Rule 38(d), Federal Rules of Civil Procedure.

Finally, petitioner Elliott urges (Pet. 6-8 (Questions 4, 7, 15), 11-13, 15) that the summons violates his constitutional rights. However, the summons sought only corporate records and thus was not barred by petitioner's personal privilege against self-incrimination. See, *e.g., Bellis* v. *United States*, 417 U.S. 85, 88-89; *Curcio* v. *United States*, 354 U.S. 118, 122; *Grant* v. *United States*, 227 U.S. 74, 79-80; *Wilson* v. *United States*, 221 U.S. 361, 384-385. Moreover, since the summons only sought specified records for a three-year period, it was sufficiently narrow to meet the requirements of the Fourth Amendment. See, *e.g., Wilson* v. *United States, supra,* 221 U.S. at 376; *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, 195, 208-209.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1975.